IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 830 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIKHUBHAI CHHANABHAI NAYAK - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MR BS SUPEHIA for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1,
None for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 08/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant has preferred this appeal under Section 374(2) of Criminal Procedure Code, 1973 and challenged the judgment and order of conviction dated 18th March, 1998 rendered by Learned Additional Sessions Judge, Valsad at Navsari in Sessions Case No.125/96 convicting the appellant for the offence punishable under Section 302 of I.P.Code and sentencing him to undergo life imprisonment and to pay fine of Rs.500/- and in default thereof to undergo imprisonment of six months. The appellant has been acquitted for the offence punishable under section 201 of I.P.Code.

2. It is the case of the prosecution that the appellant was the husband of deceased Miraben and were residing at new G.I.D.C. Complex at village Gundlav, Taluka/District Valsad. On intervening night of 26th September, 1995 and 27th September, 1995 between 21 hours and 10 a.m. the appellant picked up quarrel in respect of consuming liquor and assaulted Minaben in their house with hard and blunt object causing injuries of fracture and fatal injury to the

liver resulting into her death and thereafter, the appellant absconded leaving the dead body of Miraben in the house locking it from outside with an intention of screening himself from legal punishment.

3. On the basis of F.I.R. filed by one Rasikbhai Naginbhai Patel an offence was registered as First C.R. No.178/1995 by Valsad Rural Police station for the offence punishable under Sections 302 and 201 of I.P.Code and the investigation was started. During the course of investigation dead body of Miraben was sent for postmortem, panchnama of seen of offence, inquest panchnama were drawn, statement of the witnesses were recorded. The accused was arrested on 25th July, 1996. On completion of investigation a charge-sheet was laid before learned Judicial Magistrate First Class at Valsad for the offence punishable under Sections 302 and 201 of I.P.Code. As the offence was exclusively triable by the Sessions Court, the case was committed to the Sessions Court, Valsad and it was registered as Sessions Case No.125/96. Learned Additional Sessions Judge, Valsad at Navsari framed charge Exh.2 against

the accused. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of evidence, the learned trial Judge explained the incriminating circumstances appearing against the accused in the evidence. The accused in the further statement recorded under Section 313 of Criminal Procedure Code, 1973 explained the incriminating circumstances by stating that he is innocent, that before about three years during Navratri Miraben went to fetch water in the evening and fell down. She was well thereafter and he left for his work. Therefore, he does not know, how she has expired.

4. After hearing the learned APP and learned advocate for the accused, the learned trial Judge concluded that the prosecution has proved beyond reasonable doubt, the offence punishable under Section 302 of I.P.Code and convicted the appellant and sentenced him to undergo the sentence as mentioned hereinabove but acquitted him for the

offence punishable under Section 201 of I.P.Code. Being aggrieved and dissatisfied by the said judgment the accused has preferred present appeal.

5. We have heard learned advocate Mr.Supehia for the appellant and learned APP Mr.Raval for the respondent-State. We have perused the impugned judgment and record and proceedings of the case.

6. Learned advocate Mr.Supehia for the appellant submitted that the entire case relies on the circumstantial evidence and the witness examined by the prosecution have not supported the prosecution case. There is no positive evidence to indicate the involvement of the appellant in the offence and, therefore, the learned trial Judge committed error in convicting the appellant. Learned advocate Mr.Supehia submited that in the alternative, looking to the injuries to the victim there was no intention and knowledge on the part of the appellant to cause death of the deceased and, therefore, the appellant could not have been convicted for murder and the conviction is required to be altered to Section 304

Part I or II of I.P.Code.

7. Learned APP Mr.Raval opposing the appeal submitted that the evidence adduced by the prosecution proves the charge beyond reasonable doubt. Looking to the injuries found on the dead body, it is clear that the injuries were caused with an intention and knowledge to cause death of the victim and, therefore, the appeal requires to be dismissed.

8. The prosecution examined number of witnesses to prove the charge levelled against the appellant. However, except the Police Officers and the Medical Officer, all the witnesses have turned hostile and have not supported the prosecution case. It is also required to be recorded that the incident took place within four corners of the house and, therefore, there is no one to witness the incident and, therefore, the prosecution case is solely based on the circumstantial evidence.

9. In order to prove homicidal death, the

prosecution examined PW No.6 Dr.Ramratan Himatram Ramavat at Exh.15. The doctor performed postmortem of dead body of Miraben. According to the witness the external and internal injuries found on the dead body were recorded in postmortem report Exh.16. The doctor has also opined that the injuries were possible by hard and blunt object and injury No.5 was sufficient in the ordinary course of nature to cause death. The doctor has also opined that the cause of death is due to shock and hemorrhage resulting from rapture of superir Vena-cara and rupture of liver. There is no much cross-examination of the witness except that the external injuries were possible on account of fall from hill.

10. The prosecution produced postmortem report at Exh.16. It indicates external as well as internal injuries found on the dead body. Column No.17 of the report indicates the external injuries which are as under:

> “1.There were multiple bruices over frontal region of scalp right side lateral eye brow, nostrils, left side of cheek, left palm epiyostric region, left gluteal and chin size variated from 5x2x1 to 1x1x1/2.

> 2.Abresion over abdomen near umbilicus and right side eye lid size 4x2x1/2 to 4x1/2/x1/2/ cm.
>
> 3. Echymosis over left gluteal region size 7x7 cm.
>
> 4. #Left femur
>
> 5. #Steno clavicular joint right side and #rib on right side 5th and 7th and 12th rib."

11. The certificate Exh.17 indicates the cause of death. In view of this evidence it becomes clear that the death of Miraben was on account of injuries sustained by her and such injuries were possible by hard and blunt object.

12. It is defence that the internal injuries were caused on account of fall from hill, but, in our view the defence has not been able to demonstrate that the internal injuries found on the dead body were caused on account of fall from hill. Therefore, in our view the prosecution proved beyond reasonable doubt that death of Miraben was homicidal.

13. It appears from the further statement that the

appellant was aware about the injuries sustained by the deceased. It appears from the evidence of PW No.9 I.O. Kishoresingh Vaghela Exh.22 that the appellant was arrested after about 10 months from the date of the incident i.e. on 25th July, 1996. The postmortem report indicates that there were serious fracture injuries to the victim, therefore, the conduct of the appellant not taking his wife to the hospital for treatment is also un-natural. It is also significant that despite noticing the injuries the appellant did not return to his house immediately and remained absconded for about 10 months. This conduct raises suspicion about the defence of the appellant that deceased had sustained injuries by fall when she went to fetch water. It appears from the panchnama of scene of offence Exh.12 that the house from where the dead body of Miraben was recovered was locked from outside. This incriminating evidence has not been explained by the appellant.

14. The prosecution examined the first informant PW No.1 Rasiklal Naginbhai Patel Exh.6 to prove FIR-

Exh.7. However, the witness has turn hostile and not supported the prosecution case. FIR-Exh.7 indicates that it was filed by the witness as he was informed about the incident by one Shri Sumanbhai. FIR also indicates that one Devliben Purshottam had informed him about the quarrels between the appellant and his wife Miraben on the previous night. In view of the fact that the witness has not supported the prosecution case there is no need to elaborate this evidence. Similarly PW No. 2 Manjuben Jayantibhai-Exh.8 a neighbour of the appellant, PW No.4 Arvindbhai Budhabhai-Exh.13, PW No.3 Chhanabhai Govindgi Patel-Exh.11, PW No.5 Arvindbhai Thokorbhai-Exh.14 and PW No.7 Devaliben Purshottambhai-Exh.18 have not supported the prosecution case.

15. The prosecution examined PW No.8 Narotambhai Parbhubhai Patel-Exh.19 who was present at the police chowki when the informant and others came at the chowki informing about the fact that people have gathered near the house of appellant and it was locked. The evidence indicates that the witness with others went to the house of the appellant and found

that the front door was locked, therefore, they went inside the house from the back door which was open and saw that Miraben was lying and was dead. The cross-examination does not indicate that the witness did not go to the place of incident and is falsely implicating the appellant.

16. The prosecution examined PW No.9 Kishorsinh Gagubha Vaghela at Exh.22 who carried out the investigation. The witness has proved the contradictions of the witnesses. Defence has not been able to demonstrate that proper investigation has not been carried out.

17. Learned advocate Mr.Supehia submitted that looking to the injuries there was no intention and knowledge on the part of the appellant that the injuries would result into death and, therefore, the case would fall under First Exception to Section 300 of I.P.Code as the appellant was deprived of power of self-control by provocation.

18. The postmortem report Exh.16 indicates that

numerous injuries were found on the body of Miraben. Inquest panchnama Exh.10 also indicates the external injuries on the dead body. Such injuries could not have been possible by fall from hill as alleged by the appellant. Therefore, in our view the injuries were sufficient in the ordinary course of nature to cause death. Therefore, the only question remains is that whether the case would fall under First Exception to Section 300 of I.P.Code. As discussed earlier the dead body was having numerous injuries. The appellant has not satisfactorily explained the injuries found on the dead body. The appellant and the deceased were husband and wife and the incident has occurred at night in the house. Therefore, it was for the appellant to demonstrate that on account of grave and sudden provocation he was deprived of power of self-control and caused death of Miraben. However, there is no evidence that there was grave and sudden provocation from the deceased. On the contrary looking to the injuries it becomes clear that the injuries were caused on vital parts of the body like ribs and liver and it can be safely inferred that such injury were caused with intention

of causing death and the appellant very well knew that such injuries were likely to cause death. In view of this we are unable to accept that the case would fall under Exception 1 to section 300 of I.P.Code.

19. In view of above, there is no merit in the appeal and, therefore, the same is required to be dismissed and accordingly is dismissed.

20. The judgment and order of conviction dated 18th March, 1998 rendered by learned Additional Sessions Judge, Valsad at Navsari in Sessions Case No.125/96 convicting the appellant for the offence punishable under section 302 and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500, in default thereof to undergo six months imprisonment is confirmed. Muddamal to be disposed of as directed by the Trial Court.

(A.L.Dave, J.)

(Bankim N. Mehta, J.)

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